

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JACOB DIAZ,

Plaintiff,

vs.

No. CIV-12-1117 KG/KBM

ROBERT METZGAR and JOSHUA RICHARDS,  
*in their individual capacities,*

Defendants.

ORDER REGARDING PENDING PRE-TRIAL MOTIONS

This matter comes before the Court upon various motions, including Plaintiff's and Defendants' Motions in Limine (Docs. 79, 80, 81, 82, 83), Defendants' Objections to the Plaintiff's Amended Exhibit [sic] List (Doc. 128), and other pretrial matters. The parties filed responses to the Motions in Limine. *See* (Doc. 112, 115, 116, 120). A Pretrial Conference and hearing was held on November 20, 2014. Present at the hearing were Rozan Cruz and Joseph Kennedy, counsel for Plaintiff, Jerry Walz, counsel for Defendant Metzgar, and Trisha Walker, counsel for Defendant Richards. For the reasons stated on the record at the November 20, 2014, hearing, the Court hereby rules as follows:

1. the Court denies as moot Defendants' Motion in Limine No. I: Exclusion of Expert Testimony (Doc. 79), filed September 8, 2014, because Plaintiff has withdrawn Dr. [ ] Brown and Dr. Tamara Kodis as witnesses;

2. the Court grants Defendants' Motion in Limine No. II: Motion Requesting to Exclude the 4/10/14 Department of Justice Letter from Evidence or Any Reference in Argument, Voir Dire, or Questions of Witnesses Concerning this Letter (Doc. 80), filed September 8, 2014. The parties are prohibited from referencing the April 10, 2014,

Department of Justice Letter in argument, voir dire, or questioning of witnesses;

3. the Court defers ruling on Defendant Metzgar's Motion in Limine to Preclude Questions or Evidence Relating to Alleged Prior Bad Acts Including Being Named as a Co-Defendant in Other Lawsuits (Doc. 81), filed September 9, 2014, until the Final Pretrial Conference on December 5, 2014. The parties must file supplemental briefing by close of business on December 1, 2014;

4. the Court grants Defendant Metzgar's Motion in Limine to Preclude Questions or Evidence Relating to His Resignation from the City of Albuquerque (Doc. 82), filed September 9, 2014. Questions or evidence relating to any allegation that Defendant Metzgar was untruthful or provided inconsistent statements that resulted in his resignation are excluded. During questioning, the parties may inquire into Defendant Metzgar's current employment and whether Defendant Metzgar resigned from the Albuquerque Police Department;

5. the Court defers ruling on Plaintiff's Motion in Limine to Prohibit Introduction of Alleged But Not Proven Conduct Evidence (Doc. 83), filed September 9, 2014, until the Final Pretrial Conference on December 5, 2014. The parties are ordered to meet and confer prior to the Final Pretrial Conference. At the Final Pretrial Conference, the parties must submit to the Court any stipulations as to Plaintiff's Motion in Limine (Doc. 83).

6. the Court denies as moot Defendants' Objections to the Plaintiff's Amended Exhibit [sic] List [Doc. 118] (Doc. 128) regarding Plaintiff's Exhibit No. 1 – The Albuquerque Police Department Criminal Investigation Report of Robert Metzgar, Case No. 10-086534, because Plaintiff has withdrawn exhibit number one;

7. the Court defers ruling on Defendants' Objections to the Plaintiff's Amended Exhibit [sic] List [Doc. 118] (Doc. 128) regarding Plaintiff's Exhibit No. 2(a)-(n) [now labeled

3-16] – Still Photographs of Jacob Diaz, Defendant Metzgar, and Defendant Richards, until the Final Pretrial Conference on December 5, 2014. The Court also takes the parties' arguments as to labeling of the exhibits under advisement. The Court will address the issue of labeling exhibits at the Final Pretrial Conference;

8. the Court defers ruling on Defendants' Objections to the Plaintiff's Amended Exhibit [sic] List [Doc. 118] (Doc. 128) regarding Plaintiff's Exhibit Nos. 5-6 [now labeled 19-20]– Medical Bills, until the Final Pretrial Conference on December 5, 2014;


9. the parties must meet and confer prior to December 5, 2014, regarding the parties' Joint Stipulations (Doc. 91). The parties must file an amended Joint Stipulations List by close of business on November 26, 2014. If a party has any objection to a stipulated exhibit, that party must file objections by close of business on December 1, 2014. Opposing counsel must file a written response by noon on December 4, 2014;

10. the parties must file amended exhibit lists by close of business on November 26, 2014;

11. the parties must file an amended Joint Statement of the Case by noon on December 4, 2014;

12. the Court finds that supplemental briefing on Defendants Metzgar's and Richard's [sic] Motion for Attorney's [sic] Fees (Doc. 108) is necessary. The parties MAY file supplemental briefing on the Court's inherent authority to issue sanctions for attorneys' fees by close of business on December 1, 2014.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE